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15 UNITED STATES DISTRICT COURT

16 FOR THE NORTHERN DISTRICT OF CALIFORNIA

17
18 LENOVO (UNITED STATES) INC. and
19 MOTOROLA MOBILITY, LLC,

20 *Plaintiffs,*

21 v.

22 IPCOM GMBH & CO., KG,

23 *Defendant.*

Case No. 19-cv-01389-EJD

**NOTICE OF *PARTIAL* WITHDRAWAL
OF PLAINTIFFS' MOTION FOR ANTI-
SUIT INJUNCTION (DKT. 40) ONLY AS
TO FRENCH PROCEEDINGS
REGARDING EUROPEAN PATENT NO.
1,841,268 B2; AND REQUEST FOR
SAME**

Hearing Date: November 14, 2019

Time: 9:00 a.m.

Place: Courtroom 1

Judge: Hon. Edward J. Davila

Complaint Filed: March 14, 2019

Trial Date: TBD

1 Plaintiffs Lenovo (United States) Inc. and Motorola Mobility, LLC (“Plaintiffs”) file this
2 Notice of *Partial* Withdrawal in response to an order that resulted from “emergency” proceedings
3 initiated in France just over two weeks ago by Defendant ICom GmbH & Co., KG (“ICom”).

4 On October 24, 2019—over seven months after Plaintiffs filed the Complaint in this
5 action—ICom initiated an “emergency” *ex parte* proceeding in France seeking an order forcing
6 Plaintiffs to withdraw their Motion for Anti-Suit Injunction filed in this Court (Dkt. 40) (the
7 “Motion”). (See Dkt. 48 at 2.) The hearing on ICom’s “emergency” proceeding was held on
8 November 6, 2019 and today, November 8, 2019, the French court issued its ruling (the “French
9 Order”). (Bader Decl., Ex. 1 at 14.) The French Order requires Plaintiffs to withdraw their Motion
10 “in so far as it relates directly or indirectly to any legal proceedings initiated or likely to be initiated
11 by ICom GmbH & Co. KG before the French courts having jurisdiction in respect of alleged acts
12 of infringement of the French part of the European patent EP 1 841 268 B2.” (*Id.*) ICom has yet
13 to properly serve Plaintiffs with respect to the French proceedings. As a result, the French Order,
14 although ordering certain conduct from Plaintiffs, is not “binding and enforceable against” them.
15 (See *id.*) Moreover, ICom has never established that the French courts have jurisdiction to issue
16 such an order against Plaintiffs, which are U.S. entities. These objections will be explained in
17 further detail in an appeal of the French Order that is being initiated in France.

18 The French Order is imposed with substantial monetary fines for non-compliance.
19 Specifically, the French Order imposes a “200,000 euros per offence detected and per day of delay
20 from the date of issue of this order.” (*Id.*) In view of this, and without waiving the service and
21 jurisdiction objections referred to above, or any other rights or defenses, Plaintiffs hereby file this
22 partial withdrawal notice pursuant to the French Order. Plaintiffs hereby partially withdraw their
23 Motion for Anti-Suit Injunction (Dkt. 40) **only** insofar as it requested that the Court enjoin ICom
24 from pursuing legal proceedings before the French courts with respect to alleged acts of
25 infringement of the French part of European Patent No. 1,841,268 B2.

26 Furthermore, and particularly in view of the appeal of the French Order, Plaintiffs reserve
27 all rights to renew or refile the portion of its Motion specific to French proceedings with respect to
28 the French part of European Patent No. 1,841,268 B2. Accordingly, Plaintiffs request that the

1 Court proceed consistent with Plaintiffs' partial withdrawal, without prejudice to Plaintiffs
2 renewing or refiling the portion of its Motion specific to French proceedings with respect to the
3 French part of European Patent No. 1,841,268 B2, especially in light of the fact that IPCom has
4 already initiated a preliminary injunction action against Lenovo in France, which violates
5 established U.S. policy with respect to licensing SEPs to a willing licensee.

6 Plaintiffs confirm they are *not* withdrawing their Motion in any other respect. For example,
7 Plaintiffs *maintain* their request for an order enjoining IPCom from prosecuting its lawsuit in the
8 U.K against Plaintiffs' affiliates. As another example, Plaintiffs maintain their request for an order
9 enjoining IPCom, during the pendency of this case, from pursuing against Plaintiffs, Plaintiffs'
10 subsidiaries or affiliates, or any of their customers, any *other* action alleging infringement of
11 IPCom's global SEPs—with the exception of the French part of European Patent No. 1,841,268 B2
12 in France only.

13 The surviving aspects of Plaintiffs' Motion remain vital to the fair and effective
14 administration of justice in this case, wherein Plaintiffs have asked this Court to: (1) confirm that
15 Plaintiffs are entitled to a FRAND license to the SEPs owned and/or otherwise licensed by IPCom;
16 (2) confirm that the terms and conditions being demanded by IPCom for a license to its SEPs are
17 not FRAND; and (3) otherwise establish and impose the FRAND terms and conditions for such a
18 license, to which Plaintiffs and their worldwide affiliates will be bound. Absent relief from the
19 Court as to the surviving aspects of Plaintiffs' Motion, Plaintiffs remain deeply concerned that
20 IPCom will continue to pursue injunctions and piecemeal litigation against Plaintiffs, Plaintiffs'
21 subsidiaries or affiliates, or any of their customers. As IPCom has already demonstrated, if not
22 enjoined, it is likely to pursue such proceedings in a manner inconsistent with U.S. policy to force
23 Lenovo to capitulate to non-FRAND terms under threat of injunction. These pursuits would also
24 be designed to subvert this Court's ability to effectuate an objective and neutral global FRAND
25 resolution of the parties' dispute.

1 Dated: November 8, 2019

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2 By /s/ Martin R. Bader

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